APPEAL NO. 010237

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 5, 2001, a hearing was held. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; (2) the compensable injury extended to the claimant's infection of the right lower extremity; and (3) the claimant had disability from December 16, 2000, through the date of the hearing. The appellant (carrier) appealed and the claimant responded.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. The claimant had the burden to prove that he sustained damage or harm to the physical structure of the body, which arose out of and in the course and scope of his employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer did not err in determining that the claimant's compensable injury extended to include the cellulitis/osteomylitis/methicillin-resistant staphylococcus aureus infection of the right lower extremity. The claimant had the burden to prove that the infection naturally resulted from the compensable injury. Section 401.011(26); *see* Texas Workers' Compensation Commission Appeal No. 950524, decided May 19, 1995. Where the matter of the causation of the claimed injury is beyond common knowledge or experience, expert evidence to a reasonable degree of medical probability is required. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). In Stodghill v. Texas Employers Insurance Association, 582 S.W.2d 102 (Tex. 1979), the Supreme Court of Texas stated that the medical expert need not use the exact magic words "reasonable medical probability," but the testimony is sufficient if the circumstances show that this is the substance of what the expert is saying. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We cannot conclude that the medical records and opinions expressed are so vague or otherwise cannot be found to convey a reasonable medical probability as opposed to a mere possibility, or that the hearing officer's determination was so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The hearing officer did not err in determining that the claimant had disability from December 16, 2000, through the date of the hearing. Disability is a question of fact to be determined by the hearing officer and may be based on the testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 000303, decided March 29, 2000. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge